FISHBACK

Illinois Legislation on Slavery and Free Negroes

History
A. B.

1901

ILLINOIS LEGISLATION ON SLAVERY AND FREE NEGROES

1818–1865

by

M. M. Fishback.

Thesis

presented for the degree of

BACHELOR OF ARTS

in the Political Science Course.

University of Illinois.

June 1901.

UNIVERSITY OF ILLINOIS

May 31 1901

THIS IS TO CERTIFY THAT THE THESIS PREPARED UNDER MY SUPERVISION BY

Mason McCloud Fishback

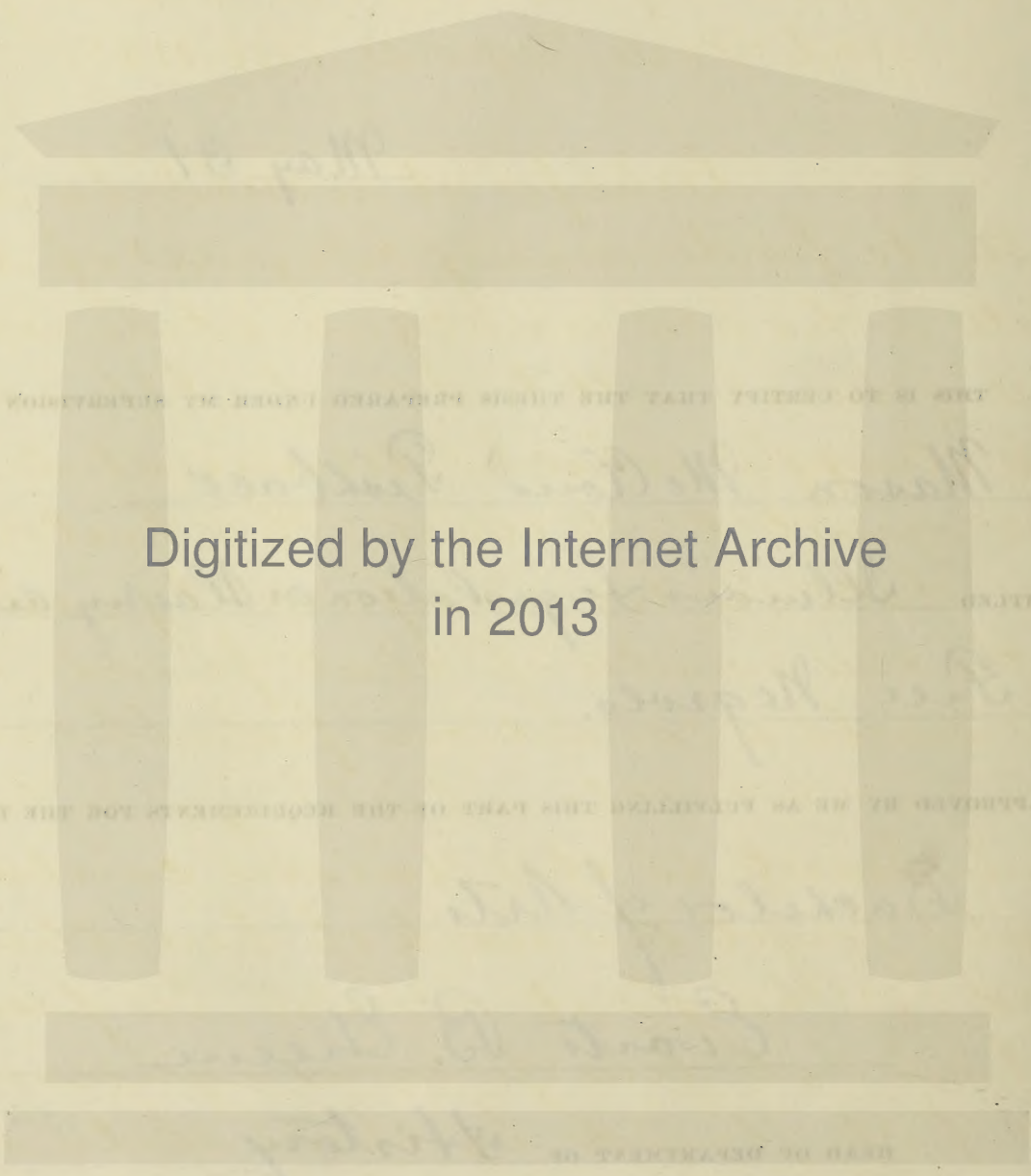
ENTITLED Illinois Legislation on Slavery and Free Negroes.

IS APPROVED BY ME AS FULFILLING THIS PART OF THE REQUIREMENTS FOR THE DEGREE

OF Bachelor of Arts

Evarts B. Greene

HEAD OF DEPARTMENT OF History



Illinois Legislation on Slavery and Free Negroes, 1818-1865.

Perhaps it would be difficult to find many citizens of this state who are unacquainted with the general attitude of Illinois in the struggle which terminated in the great Civil War. The history of the state is too inseparably associated with the events of that period to render such a condition probable. The commonwealth which gave Lincoln and Grant to the Union could not easily forget the work of her illustrious sons. Although it would be possible to find but few persons ignorant of the part played by their state in the national struggle over the slavery question, it is very much to be doubted if there are many who are well informed as to the attitude

of Illinois toward the same question within her borders. When the war began and Lincoln issued his call for troops, there was a ready response from this home state. Too often, however, this condition is taken as a matter of course, but this conception is a very false one. Illinois was nominally a free state, but there is much in her history, and this is not so remote either, that might tend to refute this assertion. The questions of slavery and free negroes played a large part in the life of our state. To show how this is illustrated in the laws of the commonwealth, is the purpose of this discussion.

Although this paper deals with the period, 1818 to 1865, it is necessary to begin before this time in order to get a clear view of the conditions in 1818. Slavery was originally established in Illinois by the French. Great Britain at the close of the French and Indian war in 1763, confirmed

the rights of the settlers to hold slaves. After Clark's expedition in 1778, Virginia acquired possession of the territory, and held it as a county under her jurisdiction. It was next transferred, in 1784, to the general government. The bill ceding Illinois to the United States contained this clause[1]: "That the French and Canadian inhabitants and other settlers of the Kaskaskias, St. Vincents, and the neighboring villages, who have professed themselves citizens of the State of Virginia, shall have their possessions and titles confirmed to them, and be protected in the enjoyment of their rights and liberties." Thus it is clear that there had been no change from the conditions existing under the French. Their right to continue slavery, had first been affirmed by Great Britain and then by Virginia. But not long after this time, in the Ordinance of 1787, slavery was emphatically pro-

1. Act of Virginia (See Illinois Revised Statutes 1877 p 17.)

hibited in these words[1]: "There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in punishment for crimes whereof the party shall have been duly convicted."

Thus it is seen that the Virginia Deed of Cession of 1784, and the Ordinance of 1787 conflict. As a result two factions sprung up, one advocating the authority of the former, and the other declaring its faith in the latter. The pro-slavery party took the initiative as early as 1802, when it sent to Congress a memorial praying for the suspension of the articles prohibiting slavery in the territory. This agitation was continued for several years, but in 1807, just two years before Illinois was separated from Indiana territory, upon a remonstrance being

---

1. Ordinance of 1787, article VI may be found in Revised Statutes 1877: p 21-22.

sent to Congress by the anti-slavery party, the whole matter was dropped for the time being.

In 1807 a law was passed[1] which permitted masters to bring in their slaves, provided that immediately thereafter an indenture should be drawn up and recorded. If the slave should not consent to such an arrangement, his owners was allowed sixty days to remove him from the territory. If the slaves were under fifteen years of age, they could be held for several years, the males until they were thirty-five, the females until they were thirty-two. Male children born of indentured slaves were to remain in bondage until thirty years of age, while this was reduced to twenty-eight in the case of females. The term of the indenture that was generally agreed upon was that of ninety-nine years.[2] After the organization of the Ter-

1. Davidson and Stuvé: p 314
2. Gillespie, Recollections of Early Illinois: p. 7.

inois territory in 1809, this same law was adopted by the governor and judges and their action was endorsed by the first legislature in 1812. In 1817 a law was passed which provided for the repeal of so much of the above law as provided for the bringing of negroes into the state for the purpose of indentureing them as slaves. Governor Edwards, however, promptly vetoed the measure.[1]

This was the state of affairs in 1818. There seems to be no question that there was a large party which was radically in favor of the introduction of slavery. Moreover this party contained the majority of the leading men of the territory. The governor, Ninian Edwards, was a southerner, having been born in Maryland and brought up in Kentucky. Tho a slave-holder, he was in favor of Illinois entering the Union as a free state.[2] Governor Bond, the first state executive, was not so

---

1. 2 Davidson and Stuve: 316.

firmly opposed to the introduction of slavery, and was willing to countenance its existence. The most of the people of the state held the same views.[1] The Ordinance of 1787 was the great barrier to the pro-slavery party. The fear that slavery agitation might postpone statehood prevented radical measures being taken.

The first constitutional convention met in July, 1818. The journal of this convention is not now available. However, it is known that there was a great deal of discussion and strong feeling aroused over the subject of slavery. The controlling spirit of the convention was Elias Kent Kane. That Kane was strongly pro-slavery in his views, the convention struggle under Governor Coles clearly demonstrated.

What was really accomplished[2] is best shown by an examination

---

1. Brown: Slavery in Illinois: 10-11.
2. See Revised Statutes for Constitution, article 6.

of the constitution itself. Article six, the one which refers to slavery, is as follows: "Neither slavery nor involuntary servitude shall hereafter be introduced into this state, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted; nor shall any male person arrived at the age of twenty-one years, nor female person, arrived at the age of eighteen years, be held to service of any person as a servant, under any indenture hereafter made, unless such person, shall enter into such indentures while in a state of perfect freedom, and on condition of a bona fide consideration received or to be received for their services. Nor shall any indenture of any negro or mulatto hereafter made and executed out of this state, or if made in this state, when the term of service exceeds one year, be of the least validity whatever, except those given in the case of apprenticeship."

Section two of the same article provides that no person bound to service in any other state should be hired to work in Illinois except in the saline tract near Shawneetown. The service should be for one year at a time, and such contracts were to cease altogether after 1825. "Violation of these provisions was attended with the emancipation of the party concerned."

Section three relates to indentured slaves. The indentures made under the territorial laws were to remain intact and in force. However, it was ordained that the children born after the formation of the constitution of indentured parents should become free after a specified period of service. The male children were to serve until they were twenty-one, while female children were released at eighteen."

---

1. Constitution of 1818: Article VI

Thus, it is seen that the question of slavery and of service formed a large part of our first constitution. Reasoning from effect to cause, it would seem that there must have been a great deal of discussion in the conventions. In fact it is known that the article on slavery was the subject of a heated debate, and was almost the only one over the adoption of which there was any excitement. It was recognized, before the convention met, that this was going to be a disputed point, and as a consequence it was debated with great earnestness in the caucus.[1] Ford states that in the election of members to the convention the only questions placed before the people were regarding the right of the constituent to instruct his representative, and the introduction of slavery.

---

1. Reynolds "My Own Times." p 207

Considerable objection was advanced against the constitution when it was presented to Congress. Talmadge of New York, objected to it on the ground that the prohibitory clauses, if not actually sanctioning slavery, were not sufficiently strong. The wording of the clause was that slavery "shall not hereafter be introduced." He objected to the use of the word hereafter. Grant Harrison and others thought that the prohibition was adequate. Talmadge believed that the Illinois constitution infringed upon the Ordinance of 1787. Talmadge's faction was in a small minority, for when the question came to put of admitting the territory into the Union, it was decided by a vote of one hundred nineteen to thirty-four.[1]

Although Illinois was known as a free state, her states on

1. Annals of Congress 1818-1819 pp. 304-311.

the slavery question was rather peculiar. The extent of the state north and south has brought it into touch with the factions in the United States. The southern half of the state was first settled, and consequently the tide of immigration from Virginia, Tennessee, and Kentucky — pro-slavery districts — gained an early control of the commonwealth, and directed the policy of Illinois politics.

The Constitution of 1818 was not referred to the people. Shadrach Bond, the governor elect, and the majority of the other executive officers were either avowedly for slavery, or passive in their attitude toward its introduction.

Once admitted into the Union the process of legislation began. This early included the subject of slavery and free negroes. [1] At the second

---

1. Laws of Illinois 1819–1821: 354.

session of the First General Assembly, which met January 4, 1819, a stringent slave code was adopted. This act of March 30, 1819, "An act Respecting Free Negroes, Mulattoes, Servants and Slaves", was the first of a long series, the provisions of the most of which remained in the statutes of our state until 1865. This act of 1819 is important not only in point of time, but with respect to its relation to those which follow. It is not only the forerunner of the rest, but the parent as well. All of its successors were in reality amendments to it, although not always so styled in their titles. Since the importance of this act is so great, it is necessary that a close examination of its various features be made, and its different sections analyzed.

Sections 1-2. Previous to settling in the state the negro or mulatto had to produce a certificate of free-

dom under seal of a court of record. This was to be endorsed by the circuit clerk of the county in which he wished to reside, together with the date, name, and description of himself and family. The overseers of the poor, however, were empowered to remove any negro from the county who had failed to comply with the provisions of the poor law.

Section 3. It was provided that it was unlawful for anyone to bring a slave into the state for the purpose of freeing him. In case this was done, though, a bond of one thousand dollars was required as a guaranty that the person's slave would not become a county charge. Failure to comply with this section was attended with a fine of two hundred dollars for each emancipated slave.

Sections 4-5. These sections related to free negroes already residing in the state. They were to file name, description, and evidence of freedom,

with the circuit clerk. Once recorded this was considered sufficient evidence of freedom. No negro unprovided with such a certificate was eligible for employment, and anyone hiring such a negro was to be fined one dollar and a half for each day's work performed.

Section 6. Anyone knowingly harboring a slave, or preventing the recapture of the same, was to be guilty of felony, and to be punished accordingly.

Section 7-8. Every negro found without a certificate of freedom was to be considered a runaway slave, subject to arrest and commitment by a justice. He was then for six weeks to be advertised by the sheriff, and in the meantime not having established his freedom, was to be sold for the period of one year. If at the end of this time he had not been claimed he was to be given a certificate of freedom, which showed

guaranty his freedom unless he were subsequently claimed by his owners. The "taker-up," or the one who informed against him, was to receive ten dollars or the reward offered by the owners. After his release the negro was to receive the amount of the wages for which he had been hired. Any person fraudulently gaining possession of a free negro by false warning was to be punished for forgery.

Section 9. This section prohibits kidnapping, it being provided that anyone forcibly taking a free negro or indentured slave out of the state — excepting masters removing their runaway slaves — was to pay a fine of one thousand dollars to the injured party.

Sections 10-25. The remaining sections of the code deal with the relation of the servant or slave to his master and to the public in general. The master was to provide suitable food and clothing for his servants,

and at the end of the period of service was to supply him with a special outfit of clothing. Servants guilty of misbehavior or laziness were to be corrected by stripes. In case of mistreatment the servant was to find redress in the circuit court. If he became sick or lame, or otherwise incapable of service he was, nevertheless, to be maintained until the end of his period of service. A negro was not allowed to purchase as a servant anyone not of his own color. This, of course was to prevent negroes from holding white slaves. Commercial dealings of all kinds, without the consent of the master were prohibited under penalty of forfeiting to the latter a sum equal to four times the amount of the transaction. Where free persons were to be punished by fines, negroes and slaves were to receive whippings, at the rate of twenty lashes for every eight dollars, tho no offender was to receive more than forty at one time.

upon being found ten miles away from home without a permit, the servant was liable to be taken before a justice and to receive thirty-five stripes, while ten were administered if he appeared at any dwelling or plantations without leave. Unlawful assemblages and routs of all kinds were forbidden, while any person permitting dancing or reveling by slaves on his premises could be fined twenty-five dollars. It was the duty of the county officers to assist in the apprehension of slaves guilty of any such misconduct.

This code was in fact a re-enactment of the territorial laws regarding slavery, such a revision being necessary on account of the change in the form of the government. Naturally, the law which permitted the introduction of slaves from the slave states, was omitted. The section which perhaps is open to the most criticism is the ninth,

which related to kidnapping. The clause stated that a thousand dollars should be given the injured party, and not to the one who should cause the offender's arrest. When the victim was carried so far south as to prevent his return, the remedy was stolen with him. In the second place, the penalty was insufficient, for in case the kidnapper was not able to pay the fine, no other punishment was provided. This was the "condition of the kidnapping scoundrels in 99 cases out of a hundred. Again, many of the ignorant blacks were enticed out of the state by fraud and deceit and then forcibly taken and sold into slavery. To prevent this the laws made no provision".[1] Kidnapping was very common at this time, the sentiment in the southern part of the state being specially favorable to its practice.

---

1. Davidson and Stuart p 317.

Ford,[1] in his history of Illinois thinks that the object of these laws was partly to prevent free negroes from becoming numerous in the state, and partly to discourage slaves from escaping to Illinois in search of freedom. He furthermore thinks that such an object was highly commendable when one stops to consider the importance, for the sake of harmony and good government, of preserving the homogeneous character of the people. Of course it is idle to speculate as to what might have happened if a different course had been followed, but it would seem that the danger of the state being overrun with large numbers of blacks was highly exaggerated. As a majority of the early settlers were from southern states, they unconsciously — as Ford believes — imported these laws along

---

1. Ford: History of Illinois p. 34.

with a number of others, although they did not fit into the new conditions. He shows how laws were adopted from the south for the inspection of tobacco and hemp, when neither was an Illinois product. It is possible these laws were passed for the above reason, but it does not seem improbable that the contrary is true. If the early legislators were largely from the south, they certainly had the interest of their section at heart. In fact the history of the commonwealth both before and after the passage of these laws (1819) certainly proves this to be true. If it is reasonable to believe that the act of 1819 was unconsciously passed by slavery sympathizers, how much more credible it is that these same persons were alive to their opportunity, and were taking advantage of it. Such a code, no doubt, would have been justifiable in a slave state where the number of blacks would have necessitated measures of this

kind, but in Illinois, out of a population of 55,162 (in 1820) there were only 917 slaves, and many of these were simply indentured and registered servants.[1]

In August 1822 occurred the second state election. There were four candidates for the governorship: Phillips, Browne, Moore, and Coles. The first two were pro-slavery in their views. Moore was an independent candidate, although he was nominated by the military faction. Coles had been private secretary to President Madison and had been appointed register of the land-office upon his removal to Illinois. Upon his arrival from Virginia he had set free his slaves and had established each family upon a quarter-section of land. He believed that slavery was wrong, and was actively opposed to it throughout

---

1. Davidson and Stuvé, p 911.

his life."

While the question of making Illinois a slave state was not one of the exposed issues of the campaign, "it was in the air" and certainly had some influence upon the election.[2] Coles was successful, receiving 2854 votes, Phillips, 2687, Browne 2443 and Moore 622. Coles' plurality was but 167 and he was in a minority of total vote cast.[3] The lieutenant-governor, Hubbard, was a pro-slavery man, while the majority of the legislators were pro-slavery also.

The new governor delivered his inaugurate address December 5, 1822 and then and there began his fight against slavery in Illinois. He called attention to the fact that, notwithstanding the Ordinance of 1787, slavery still existed in the state.

---

1. Washburne: Sketch of Edward Coles: 17-
2. Moses, Illinois - Historical and Statistical 1:307.
3. Washburne: Sketch of Edward Coles: 5-8-57.

He recommended "that the legislature put an end to the practice, and should adopt more effective means against kidnapping, which seems to have been very common at this time." "That justice and humanity required of us a general revisal of the laws relative to negroes, in order the better to adapt them to the character of our constitutions and the situation of our country." A committee was appointed to consider the Governor's message, a special one being named for that portion referring to slavery. The latter, as was to be expected, brought in an adverse report. It declared "that although restrictions against slavery were imposed in the first constitution, at the present time the state possessed the same right as the state of Virginia to alter her constitution or to settle the slavery question.

---

1. Washburne: Sketch of Edward Coles. 45
2. See Moses: I 316.

It was considered that the best means to accomplish this would be to call a convention to alter the constitution. To submit this to the people it was necessary that a resolution be passed by a two-thirds vote. The pro-slavery men had enough votes in the Senate but in the House just one was lacking, a member by the name of Hansen on whom they had counted having voted against them. Hansen's election had been contested at the beginning of the session by John Shaw, but the committee on elections had reported unanimously in favor of the former. This episode was now remembered, and the House decided to reconsider the matter. The result was, in brief, that Shaw was recalled and the resolutions calling the convention were adopted. The thing now to be done was to defeat the measure at the polls.

---

1. Washburne: Sketch of Edward Coles. 73

The great majority of the political leaders of the state were against Coles.[1] The newspapers were about evenly divided. The most of the common people of the state were supporting the governor. The election August 2, 1824, after a very heated campaign, gave the anti-convention party a majority of 1668 out of 11,612 votes.[2]

During this struggle Governor Coles was subjected to a great deal of abuse and annoyance, and whatever could be done to injure him was attempted. In 1824 a suit was brought against him in the county of Madison for neglecting to comply with the provision of section 3 of the act of March 30, 1819.[3] This provided that anyone bringing slaves into the state for the purpose of setting them free should execute a bond of $1000 as guaranty

---

1. Ford History of Illinois p. 53
2. " " " " p. 55.
3. Washburne: Sketch of Edward Coles. 197

that the emancipated slaves should not become a county charge; failure to do this was attended with a fine of $200 for each slave set free. The act was passed a month before Coles came to Illinois, but was not published for several months afterwards. As a result Coles had failed to comply with the law when he emancipated his slaves. The suit was begun in the March term, but went over till September when a verdict of $2000 was rendered against the defendant. A motion for a new trial was made, but not being determined, the case was continued to the March term, 1825. In the meantime (January) the legislature passed a law releasing all persons from penalties incurred in this way.[1] Thereafter each person was to immediately comply with the requirements of the law. In three months a second

1. Laws of 1825 p. 150. Washburne's Sketch of Edward Coles p. 20.

chance was given to any who had unwittingly neglected this matter. This amendment was passed especially in the interest of Governor Coles, in order to release him from this unfortunate law-suit. He was acquitted, but not until the case was carried to the Supreme Court.

Governor Coles delivered his valedictory message December 6, 1826.[1] In this last address to the legislature he again took occasion to refute to the slavery question, as a digest of the laws and a new criminal code were to be adopted during this session. He earnestly recommended that the laws referring to negroes be revised and be made less repugnant to the conditions in Illinois. But if the assembly should not see fit to abolish slavery he would have them adopt such measures as would ultimately put an end to it. But even

1. Senate Journal 1826 ff 21-2

if this could not be done he urged that the provision compelling children, born of indentured slaves, to remain in bondage up to a certain age, should be stricken out. He also advocated more protection for free negroes. Although he was not in favor of encouraging their immigration, he thought that the state should furnish protection for those who were already within its borders. In conclusion he urged a change in the general attitude toward the negro, and that instead of being considered a slave until proven free, the contrary should be the case.

This was the third time Coles had called attention to this subject: the first time was in his inaugural speech, December 5, 1822; the second, in his message to the extra session of the legislature, November 18, 1824. Historians are agreed that Coles' method of procedure, and his lack of tact, he can not

fail to admire his wonderful earnestness and zeal.

With the exception of the act of 1825 the slave code remained unaltered until 1829.[1] In that year an act was passed, January 17, which related especially to free negroes. It contained four sections, the first two of which were largely reproductions of sections one and two, and seven and eight, of the act of 1819. No colored person who was not a citizen of another state could gain a residence in Illinois without first filing a certificate of freedom in the county commissioner's court, and giving a thousand dollars bond that he would be self-supporting. It will be seen that in this act the responsibility was placed upon the negro himself. No bond was required of a free negro by the former act. He simply had to file a

---

1. Revised Laws of 1833: 463-465

certificate of freedom with his circuit clerk. It must have been almost impossible for a negro to gain a residence under these conditions. This was but one more barrier to the immigration of free negroes.

Anyone failing to observe these rules, and hiring or harboring a negro who had not complied with the law, was liable to a fine of five hundred dollars. Section two details the manner of dealing with runaway slaves, which is practically the same as that set forth in the first act. If a slave should escape to this state (section 4) and afterwards institute a suit to procure his freedom, he should at once be turned over to the sheriff who should deliver him to his owner.

In section three a new point is dealt with which the former act had failed to consider. The intermarriage of whites and blacks was very strongly prohibited; such marriages were to be null and void,

and punishable by fine, whipping, and imprisonment for a period not less than one year in length. Officials taking any part in such ceremonies were to be fined two hundred dollars, and were to be ineligible for re-election.

This act of 1829 was amended February 1, 1831.[1] This amendment re-iterated the necessity of the negro giving a bond. In addition the act provided that a fine of one hundred dollars should be imposed upon any one aiding a negro in any way, to gain a settlement in the State. This act is a distinct amendment to the act of 1811, and is far more severe. The latter provided that a slave-owner could bring his slave into the state and free him, provided he gave a bond for their self-support. The act of 1831 makes no exception whatever. The sentiment

---

1. Laws of 1831: 101.

against the blacks must have been pretty strong that such a law could have been passed.

The violators and the offenders of this law must have been numerous, for at the next meeting of the legislature it was found necessary to pass another amendment discharging from penalties all those who had violated the third section of the act of 1819.[1] As was shown above, an amendment was passed in 1825 affecting this very point. Without a careful reading one would suppose that the two amendments were identical with the exception of some minor differences in wording. But the second is more comprehensive than the first. The latter provides "that any person who may have failed or neglected to comply with the provisions of the third section

1. Revised Laws of 1833 : 466.

of the act above recited, and to which this is an amendment, shall be and they are hereby released, and entirely discharged from any penalty incurred under the provisions of the said act or from any verdict or judgment rendered against them in any of the courts of this state____" The amendment of 1833 reads: "That any person who may have failed or neglected or may hereafter fail or neglect to comply (the italics are mine) with the third section of the act to which this is an amendment, shall be and they are hereby released and entirely discharged from the penalty incurred, or to be incurred under the provisions of the said act."____ That which follows in each case is that the party shall proceed at once to comply with the requirements of the act.

The first amendment as was

seem, was passed during the administration of Governor Coles and expressly for his benefit. No provision was made for the future violators of the act, and of course none could have been made for those who may have failed to comply with the act of 1831. Hence the necessity of making the provisions of the act of 1825 more general. Apparently there was no opposition to the passage of the law of 1833 as no discussions are recorded in the journals.

The act of February 19, 1841[1] to which also there was no opposition, provided that every native, resident negro in the state should be permitted to file with the circuit clerk the names of himself and members of his family, together with their evidences of freedom. Thereupon the clerk was to

---

1. Laws of 1841: 189-190.

issue a certificate of such record, which was to be prima facie evidence of his or her freedom, carrying with it the protection of the laws. However this act was not to be construed to bar the lawful claim of any one to the negro in question.

During this period, from 1818 to 1848 there were several bills relating to slavery and to negroes which failed to pass, partly because of direct opposition but largely to indifference. The journals are very unsatisfactory as scarcely ever is the text of any bill recorded. In the Senate journal of 1835-6[1] an "act in Relation to Runaway Slaves" is found introduced. It was referred to a committee of three, two members of which were from northern counties. The latter probably offered it for it never came up again. In

1. Senate Journal 1835-6; ff. 154, 199.

the Senate journal of 1834-5 is found mention of a bill refering to negroes and mulattoes, which after a second reading was laid upon the table and ultimately lost sight of.[1]

In the first session of the Ninth General Assembly, a resolution was introduced by Mr. Maxwell of Monroe and Warren counties regarding the immigration of negroes.[2] The resolution was as follows: "Resolved, That the committee on the Judiciary be instructed to inquire into the propriety of amending the law concerning negroes, mulattoes etc., so as to prohibit their introduction into the state for the purpose of gaining settlements, under any pretence whatever; and that they report by bill or otherwise." The motion was

---

1. Senate Journal 1834-5: p. 371.
2. House Journal 1834-5 p. 61

taken respecting these resolutions, they are important in showing how this question is thus early beginning to attract attention.

In the Tenth General Assembly the famous Lincoln resolutions were introduced. During this session Governor Duncan had sent to the legislature reports and resolutions from several of the states denouncing abolitionists. As a result the Assembly passed a set of resolutions which denounced abolition societies, and maintaining the right of slaveholding by the south, and declared that Congress could not abolish slavery at the seat of government without the consent of the people of the district.[1]

Lincoln could not endorse these resolutions and took occasion

---

1. Nicolay and Hay: Abraham Lincoln I: 150

to record his protest. The importance of the latter as showing Lincoln's position at this time will justify quoting in full[1]:

"Resolutions upon the subject of domestic slavery having passed both branches of the General Assembly at its present session, the undersigned hereby protest against the passage of the same.

They believe that the institution of slavery is founded on both injustice and bad policy, but that the promulgation of abolition doctrines tends rather to increase than abate its evils.

They believe that the Congress of the United States has no power under the constitution to interfere with the institution of slavery in the different states.

They believe that the Congress of the United States has the power

---

1. Most accessible in Lincoln's Speeches I p 15, Nicolay and Hay.

under the Constitution, to abolish slavery in the District of Columbia, but that the power ought not to be exercised, unless at the request of the people of the District.

The differences between these opinions and those contained in the above resolutions is their reason for entering this protest.

(Signed) Dan Stone,
A. Lovelace,
Representatives from the County of Hampshire.

The sentiment in different parts of the state against abolition was very strong, and in Alton culminated in the death of Lovejoy, November 7, 1837. Instead of silencing the opponents of slavery this incident increased their enthusiasm. Petitions were sent to the legislature of 1837-8. Two of these were presented to the House

---

1. House Journal 1837-8 p 301.

January 29, 1839. Two days later Calhoun of Sangamon took these as a text for a set of resolutions.[1] His statement was confined to three points: First, that Illinois should openly declare her position on the slavery question; second, that Congress forever has no right to abolish slavery at the seat of government, or in the several states, and that the question of slavery should not be considered in the admission of a state into the Union; third, that the laws against negroes as a class should not be abolished. The immediate adjournment of the legislature prevented any action being taken on these resolutions.

"An act for the Safe-Keeping of Runaway Slaves" was the title of a bill introduced in the first session of the Eleventh General Assembly, 1838-9.[2]

---

1. House Journal 1839: 322.
2. Senate Journal 1839: 62

after a second reading it was laid upon the tables. Shortly afterwards an amendment to the "act relating to free negroes" was introduced[1]. When it came up for third reading it failed to secure a sufficient number of votes. The journal does not record the text of the bill and as its exact nature is not known.

During this decade the southern part of the state manifested a great deal of interest and sympathy with the neighboring slave-holding states at the loss of their escaping negroes. A bill for the apprehension and safe-keeping of fugitive slaves was introduced in the Thirteenth General Assembly, 1842-3, although nothing came of it.[2] February 7, 1843 Omitt Doughetty of Union County expressed this sympathy in a set of resolutions.

---

1. Senate Journal 1839: 222.
2. Senate Journal 1843: 124, 167, 329.

After expressing regret at the increasing number of secessions he hoped to remedy this evil, as he viewed it, by the united action of all the states in the Mississippi Valley. To this end he advocated the calling of a convention to meet in Illinois for the consideration of this problem. No final action, however, was taken.[1] During the session of 1844-5 Representative Hick of Gallatin recommended a bill for an act to prevent the stealing and enticing away of slaves.[2] A motion to lay the bill on the table was defeated, seventy-eight to eleven. The bill passed the House without any difficulty and probably would have been equally successful in the Senate, had not the legislature adjourned a few days later, thus preventing its passage.

Perhaps it would be well

---

1. Senate Journal 1843:314.
2. House Journal 1845:451.

to have been to examine some of the particular restrictive measures against negroes as a class. They held an inferior position in the body politic, and were to a large extent ignored. In cases of law the negro's evidence had no weight against that of a white — in fact his testimony was not listened to at all.[1] Every mulatto having one fourth negro blood was likewise incapable of appearing against a white man. In the act respecting apprentices, in force June 1, 1827,[2] it was provided that the child unless were bound out should be taught reading and writing and the principles of arithmetic. However, there was added in a proviso, that if such apprentice were a colored child such education was not required. Section 158 of the criminal code

---

1. Revised Laws of 1833: 496.
2. Revised Laws of 1833: 70.

(1833) shows in an indirect way another discrimination against the blacks. In this section it is provided that no white female should be sentenced to stand in the pillory; thus implying that such punishment would be allowed in the case of a negro or mulatto woman.[1] This illustration is sufficient to show what a large part negro legislation played in the history of the state. On the whole the legislation is not very creditable and at the same time it should be remembered that such laws were to a considerable degree characteristic of the times.

Although the Constitutional Convention of 1847 was not called to consider slavery measures, these played rather a large part in the Convention proceedings. Slavery as

---

1. Revised Laws (1833): 208.

such was prohibited and in no such uncertain terms as in the first convention. Apparently the question was supported unanimously as there is no struggle recorded. As first presented in a resolution by Church of Winnebago[1] it was as follows: "There shall be neither slavery nor involuntary servitude in this state, otherwise than for the punishment of crimes whereof the party shall have been duly convicted. Nor shall any person be deprived of liberty on account of color." As finally adopted the last sentence was omitted. Although the most of the people of the state were against slavery now, they were far from being abolitionists.

The discussions in the convention concerning negroes may be arranged under three heads:

---

1. Convention Journal, 1847: p. 46.

citizenship and the right of suffrage; the "underground railway;" the immigration of free negroes.

Suffrage was to be exercised only by the whites. There seems to have been almost universal opposition to the idea of allowing the negro to vote. When a resolution was offered restricting suffrage to white male citizens — the restriction being primarily to citizens, Whitney of Boone County moved to strike out the word "white." Out of one hundred eighty-five, there were only eight votes in favor of this.[1] It was also voted that colored persons should never be allowed, under any pretence whatever, to hold office in this state.[2]

Early in the convention[3] Singleton of Brown presented a petition

---

1. Convention Journal: 76.
2. Convention Journal: 469.

which strongly protested against the citizens of Illinois interfering with the slave property of adjoining states. Naturally, this was a blow at the workings of the underground railway system — or "the subterranean underground railway" as it was called. The hatred of this system, for it was fast coming to be a system, was very great and no words were spared in condemning it.[1]

Probably the most important matter discussed was that concerning the restriction of negro immigration. Bond, of Clinton county early proposed that there be added an article in the Bill of Rights prohibiting slave owners from bringing their slaves into the state for emancipation, and prohibiting free negroes from settling in Illinois.[2]

---

1. Convention Journal: 95
2. Convention Journal: 92

The next day a petition to the same effect was presented. Later Church of Winnebago offered the following as an amendment to the Bill of Rights: "The legislature shall pass no law preventing any citizen of any one of the United States from immigrating to and settling within this state." Eighty-nine voted against this and forty-seven in favor of it.

Rather than jeopardize the acceptance of the constitution, it was provided that the immigration clause be embodied in a separate article, and thus submitted to the people. The vote upon the constitution proper was: for adoption 59,887; for rejection, 10,854. The vote on article XIV (immigration clause) was not so large, being 7,066 for and 20,884 against[2]. This article was much opposed in the northern part of the state es-

---

1. Convention Journal: 458
2. Davidson and Stuve: 550

feially in Cook county.

It is to be presumed that the negroes were rather harshly treated at this time (1847) for there were several petitions presented in their behalf. These generally prayed that the principles of the Declaration of Independence be extended, and that protection and security be granted irrespective of color. An amendment to one of the immigration bills provided "that the legislature shall have no power to pass laws of an oppressive character applicable to persons of colors." This failed to pass by a vote of ninety-two to forty-six.[1]

Compared with the constitution of 1818 there are two differences to be noted: there is no question that the new constitution prohibits slavery; secondly, free negroes

---

1. Convention Journal: 92.

-ure to be prohibited settling in the state by a law which the legis-lature is instructed to pass at its next session. It may well be doubted whether or not the new document was more liberal than the old, for while it may have gained in one way it lost in another. If the negro was not subject to bondage, he was still the butt of abuse and oppression.

The Constitution provided that a law prohibiting the immigration of free negroes be passed at the next meeting of the General Assembly. Accordingly in the senate in 1849 a bill to that effect was drawn up. When the bill came up to be engrossed for third reading Mr. Judd of Cook moved to lay it upon the table.[1] His motion, however failed by a vote of sixteen to

---

1. Senate Journal 1849: 227.

eight, whereupon he proposed as an amendment the repeal of chapter seventy-four of the Revised Statutes. This chapter contained the "black laws," and his motion was lost. Reddick of LaSalle[1] then offered as an additional section a portion of the Declaration of Independence, "That all men are created free and equal." This also was promptly tabled. By a vote of thirteen to twelve the bill was ordered to a third reading. The bill finally passed the Senate by the same vote.[2] After the passage Mr. Reddick and Mr. Ames of Mc. Henry took occasion to be slightly sarcastic. The former proposed that the title of the bill be changed to: "an act for a crusade by a Christian state against negroes." The latter desired a quotation from

---

1. Senate Journal 1849: 227.
2. Senate Journal 1849: 267.

the Federal constitution as the title: "An act declaring citizens of each state to be entitled to all privileges and immunities of the citizens of the several states." [1] The bill was lost as it failed to pass in the House by the vote of thirty-four to thirty-one.[2]

Another attempt[3] was made in the next meeting of the legislature — the seventh General Assembly, which met January 6, 1851. But after being referred to the Judiciary committee it was lost sight of.

In 1853 a third attempt was made which proved successful. It was first introduced in the House and passed without difficulty. When it came up for third reading another unsuccess-

---

1. Senate Journal 1849: 271.
2. House Journal 1849: 476.
3. Senate Journal 1850-1: 31, 38.

ful effort was made to secure the repeal of the "black laws." The vote on the bill when it came up for passage — in the House — stood forty-five for and twenty-three against.[1] Mr. Henry thought that the title of the bill should be "an act to create an additional number of abolitionists in the state, and for other purposes." The vote in the Senate was much closer, the vote standing thirteen to nine.[2] Judd again felt sarcastic and thought a truer title would be: "an act to establish slavery in this state."

The provisions of this act of 1853 deserve special examination. Anyone aiding a negro, bond or free, to secure a settlement in Illinois was to be fined not less than

---

1. House Journal 1853: 443
2. Senate Journal 1853: 475.

one hundred dollars or more than five hundred and to be imprisoned in the county jail not longer than a year. The negro was to be fined fifty dollars if he stayed in the state ten days with the purpose of continuing his residence here. Upon failure to pay the fine he was to be arrested and to be advertised for ten days by the sheriff and then sold to the person who would pay the fine and costs for the shortest term of service. During this period the temporary owner was to work the negro at his pleasure. The prosecuting witness was to receive half of the fine imposed.[1]

Several attempts were made to make this law more stringent but in 1857 an amendment was

---

1. Laws of Illinois, 1853: 57-60.

introduced in the House and got as far as a third reading before it was dropped.[1] In 1861 a resolution was introduced in the House asking for a more effective law. The resolution was adopted by a vote of sixty-five to seven.[2] The Constitutional Convention of 1862 decided "that no negro or mulatto shall migrate to or settle in this state, after the adoption of this constitution."[3] As late as 1863 a final effort was made to make this law more effective. The bill passed the House but failed in the Senate.[4]

In 1853 Nixon of McHenry tried to get a bill passed which would enable colored persons to give testimony.[5] But this was stalled by a large vote. In 1855 a resolution was presented by Ref-

---

1. House Journal 1857: 446.
2. House Journal 1861: 60-1
3. Convention Journal, 1862: p. 1098.
4. House Journal 1863, 1500. 5. House Journal, 1853, 145-6.

resentative Diggins of Boone county denouncing the policy which denied colored tax payers the right to send their children to the public schools.[1] This was likewise tabled. It must have seemed to the blacks that their condition was well-nigh hopeless.

During this decade, 1850-1860 the feeling on the slavery question in national politics grew more intense and the hope of peaceable settlement became more remote. This struggle was reflected much in the different states, finding expression in the state legislatures. This was especially true in Illinois where each faction had ardent supporters. In 1849 Havens, a representative from Kendall county offered a resolu-

---

[1] House Journal 1855: 266.

tion embodying these recommendations:[1] 1. that Congress should abolish slavery in the territories; 2. all United States laws sanctioning slavery in the District of Columbia or elsewhere should be repealed. The majority of the House were against such measures for the resolutions were laid on the table — the vote standing forty to twenty-four.[2] In the preceding or regular session, the two houses adopted a resolution which was distinctly anti-slavery. This instructed our Congressmen to use their influence "to procure the enactment of such laws by Congress for the government of the countries and territories of the United States, acquired by the treaty of peace, friendship, limits and settlement with the republic of Mexico concluded February 2, 1848

---

1. & 2. House Journal 1849: 27.

as shall contain the express declarations, that there shall be neither slavery, nor involuntary servitude in said territories, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted." [1].

The next General Assembly met January 6, 1851 and on the very first day Shaw of Lawrence started a discussion by offering a series of resolutions on the slavery question. [2] His resolutions were pro-slavery in tone. Four points were embodied therein: 1. that it is inexpedient and unconstitutional for Congress to interfere with domestic slavery in the different states; 2. that the resolutions passed at the preceding session should be repealed; 3. that the compromise measures (of 1850) should be endorsed;

---

1. Senate Journal (1849 1st session): 50; House: 55

2. House Journal 1851: 6.

4. that the Federal constitution ought to be upheld. To show how strongly these sentiments appealed to Shaw's colleagues it is but necessary to give the vote upon a motion to lay the resolutions on the table — which was twenty-eight for and forty-five against. Thereupon the whole matter was referred to a special committee about equally divided as to northern and southern members.[1] Besides concurring with Shaw, the report endorsed the fugitive slave law recently passed by Congress. After lying upon the table for some time the report came up again January 22.[2] A new resolution was added, to the effect that no limitations should be placed upon the organization of a territorial or state government other than it should be republican in form, and

---

1. House Journal 1851: 71.
2. House Journal 1851: 126.

in harmony with the Constitution. The set was adopted by sections, the opposition being small, the greatest disagreement being to the fugitive slave law and to the repeal of the resolutions offered at the preceding session, the vote being the same for each, fifty-four to fifteen. Similar resolutions were drawn up in the Senate[1] and adopted, the chief opposition here being to the Wilmot Proviso clause, the vote standing eighteen to seven. On the other sections the vote generally was twenty-one to four, or twenty-two to three.

From now on to the beginning of war, the all prevailing theme of resolutions on national affairs was that of peace, the maintenance of the Union and the complete suppression of slavery agitation.

---

1. Senate Journal 1851: 4, 5-3.

any attempt to disturb the critical condition was denounced. In 1855 and 1857 resolutions of this tone and purport were adopted.[1] In 1859 Higbee,[2] a senator from Pike county, in a number of resolutions set forth the platform of the Democratic party. The planks of this which referred to the slavery question were anything but anti-slavery in aspect. Abolition movements were denounced, the Compromise of 1850, including the objectionable fugitive slave law, was upheld. The Dred Scott decision was accepted as just, while Lincoln's claim that the Union could not continue to exist partly free and partly slave, was ridiculed. The Kentucky and Virginia Resolutions of 1798, and 1799

---

1. 1855: House Journal: 235; Senate Journal: 327.
   1857: Senate Journal p. 323-4.
2. 1859: Senate Journal: 174-7.

were declared important foundations in the party's creed. These resolutions were accepted, fourteen to eleven. Two days later there was a motion to reconsider this matter, but it was deferred until February 7. On that day "Marshall of Colex offered a number of resolutions as substitutes for those presented by Higbee." He began by stating that he considered the slavery question not merely one of dollars and cents. Then he gave a brief outline of the history of slavery in the United States. He thought that the government should not reject a state constitution even if it did sanction slavery — provided it were republican in form. (With this exception his resolutions were strongly anti-slavery. The vote resulted in a tie and the speaker voted for the resolu-

---

1. Senate Journal 1859; 223

tions. Higbee's resolutions thus amended were very objectionable and his party cast them aside by a vote of twelve to ten." The House also, during this session (1858-9) took an active interest in national politics. February 15, Davis[2] of Montgomery introduced a set of resolutions which were adopted by a vote. Loyalty to the Union was expressed; popular sovereignty endorsed; constant agitation of the slavery question denounced; non-intervention of slavery in the states and the admission of a state irrespective of slavery were recommended; lastly it was declared that a division ought not to be denied a state if the latter prohibited the immigration of free negroes. The vote on this last clause was, for, sixty-five against, three.

---

1. Senate Journal 1858-9: 229-230.
2. House Journal 1858-9: 688

In 1861 in an attempt to do something to prevent war, resolutions with this end in view were offered. It was suggested (in the Senate) that a national convention be held to propose amendments to the constitution.[1] Another scheme was that Congress should enact several compromise measures which should enact that slavery should not be interfered with where it already existed, and that popular sovereignty should settle the same matter in new states".[2] No action was taken with respect to these resolutions.

The Twenty-fourth General Assembly met January 2, 1865. On the the next day[3] bills were introduced for an "act to repeal certain statutes known as the black laws".

---

1. Senate Journal 1861: 16.
2. House Journal 1861: 112.
3. Senate Journal 1865: 67

When the bill came up for a third reading, January 24, McConnell of Morgan County moved that the act of 1853 be not included in the number to be repealed. His motion however was lost — thirteen to ten.[1] The bill finally passed the Senate by the same vote, while in the House forty-five voted for it and thirty-one against it.[2]

February 1, 1865, Illinois ratified the XIII amendment, being the first state to do so. It was on February 7 that the black laws were repealed, although, as was seen above, a bill for that purpose was introduced early in the session.

What did the expression "black laws" mean at this time? The laws repealing these statutes provided that sections 16 of chapter

---

1. Senate Journal 1865: 261-2.
2. House Journal 1865: 354.

XXX, and 23 of chapter XL of the Revised Statutes of the state be repealed together with the chapter on negroes (LXXIV) and the act of February 12, 1853.[1] The first two sections above refer to the prohibition of negroes acting as witnesses against white men.[2] The act of 1853 prohibits the immigration of free negroes. Chapter seventy-four included all the remaining restrictions against negroes.[3] The Revised Statutes designated here were compiled in 1845. At that time the acts of 1819, 1829, 1831, 1833, and 1841 were repealed and the above chapter put in their places. It might be interesting to know what changes were made at this time. Practically all of the act of 1819 is found in the chapters, the sections respecting the kidnapping of

---

1. Public Laws of 1865: 105.
2. Revised Statutes (1845) sec. 16 is on p. 154
   sec. 23 is on p. 237.
3. Revised Statutes (1845): 387.

negroes and the selling of intoxicants to them are found in the Criminal Code. All of the act of 1829 except the third section which related to the inter-marriage of whites and blacks and which is found in section two of the chapter on marriages[1] is retained. The act of 1833 is omitted and in its place was included a portion of the act of 1831 which dogmatically declared that any one guilty of the offence of bringing a slave into the state in order to free him should be fined one hundred dollars.[2] The gist of the act of 1841, regarding the registration of resident free negroes, was included in section four of the new chapter. In short the Revised Statutes of 1845 were more stringent against negroes than their predecessors.

---

1. Revised Statutes: 353
2. Revised Statutes (1845) p 389.

Thus ended with the repeal of these laws, the legal discrimination against the negro in Illinois. Although this repeal was commendable, it was nevertheless, a tardy piece of legislation. And yet repeated efforts had been made. It is claimed[1] that with the exception of the act of 1853 these laws were long regarded as a dead letter. Ford thinks[2] that they would have been repealed long before had it not been for the abolition excitement which rendered it dangerous for a politician to propose their repeal, since such an act might have branded him as an abolitionist. Washburne[3] in his "Sketch of Edward Coles" in accounting for this indifference says that the pro-slavery sentiment which found a lodg-

---

1. Davidson and Stuve: 318.
2. Ford's History of Illinois: 34.
3. Washburne: Sketch of Edward Coles: 209.

ment in the state was vastly stronger from 1825 to 1854 than it was in 1824 when the movement toward the legalization of slavery was so effectually blocked. From the study that has been made it would seem that the last estimate is most correct. The act of 1853, or even the Amendment of 1831 shows that there existed not only indifference to the negro but antagonism as well. Illinois was willing that the conditions of the blacks in the far south should be ameliorated, but was unwilling to do anything that might make the state a haven of refuge for fugitive slaves.

Bibliography.

Ford, Thomas: History of Illinois.
Washburne, E.B.: The Edwards Papers.
Reynolds, John: The Pioneer History of Illinois.
Reynolds, John: My Own Times.
Washburne, E.B.: Sketch of Edward Coles.
Brown, Henry: History of Illinois.
Davidson and Stuve: History of Illinois.
Moses, John: Illinois, Historical and Statistical.
Nicolay and Hay:
Abraham Lincoln - History.
Abraham Lincoln, Complete Works.
Gillespie, Joseph; Recollections of Early Illinois and Her noted men.
Slavery in Illinois, by W.H. Brown.
Laws of Illinois, 1818-1865.
House and Senate Journals of the General Assemblies, 1818-1865.
Reports to the General Assemblies, 1818-1865.
Revised Statutes of 1833, 1845.
Annals of Congress.
Journals of Constitutional Conventions, 1847, 1862.